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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re

CASH CLOUD, INC.,  
dba COIN CLOUD,

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

CASH CLOUD, INC., dba COIN CLOUD,

Adv. Case No. 23-01015-MKN

Plaintiff,

**PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

v.

LUX VENDING, LLC d/b/a BITCOIN  
DEPOT,

Hearing Date: OST PENDING

Hearing Time: OST PENDING

Defendant.

Cash Cloud, Inc. d/b/a Coin Cloud ("Cash Cloud," "Plaintiff," or "Debtor"), debtor and debtor-in-possession in the above-captioned Chapter 11 case (the "Chapter 11 Case"), by and through its undersigned counsel, Fox Rothschild LLP, and The Jimmerson Law Firm, P.C., hereby files this Motion for Preliminary Injunction (the "Motion"). This Motion is based upon the pleadings in this action, the following memorandum of points and authorities, the declaration of Christopher McAlary, the exhibits submitted herewith, and any arguments made by counsel during any hearing on the Motion.

Pursuant to Fed. R. Bankr. P. 7008 and Local Rule 7008, Cash Cloud consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

Dated this 21st day of March, 2023.

**FOX ROTHSCHILD LLP**By: /s/Brett A. Axelrod

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**INDEX OF EXHIBITS**

<b>Exhibit</b>	<b>Exhibit Description</b>
1	Kiosk Site Location Agreement between Defendant and Roja 2 LLC
2	August 31, 2022 letter from Peter Mantas, Esq. to Hon. Jaye Hooper, Judge of the Ontario Superior Court of Justice
3	February 8, 2023 email from Landon Thomas to Frank Schilling of Royal Farms
4	Redacted copy of the February 22, 2023 email from Todd Umstott, to Michael Tomlinson
5	Redacted copy of the March 10, 2023 email from Landon Thomas to Frank Schilling of Royal Farms
6	Redacted copy of the March 10, 2023 email from Mark Smith of Bitcoin Depot to Robert Crockett of UNFI
7	Declaration of Christopher McAlary in Support of the Motion

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This adversary proceeding centers on Defendant Lux Vending, LLC dba Bitcoin Depot’s (“Defendant” or “Bitcoin Depot”) malfeasance toward Plaintiff Cash Cloud Inc. Cash Cloud is a business that provides the general public the means to buy and sell digital currency (e.g., Bitcoin and other cryptocurrencies) using ATM-style digital currency kiosks. Cash Cloud’s customers purchase digital currency by depositing cash (U.S. dollars) in Cash Cloud’s kiosk, and receiving digital currency in the customer’s digital currency wallet. In turn, Cash Cloud’s customers sell digital currency by sending digital currency to Cash Cloud, and receiving the corresponding amount of cash from the kiosk. As of December 31, 2022, Cash Cloud operated approximately 4,800 kiosks throughout the United States and Brazil, installed in some of the largest convenience and grocery store chains as well as prestigious malls.

As detailed in the Complaint, Defendant is a direct competitor of Cash Cloud with similar ATM-style kiosks that it also seeks to place in retail stores for use by consumers. For months, Defendant has waged an improper campaign to harm Cash Cloud, through, among other things, interference with Cash Cloud’s contractual relationships, deactivation of the software needed to operate Cash Cloud’s kiosks, infringement on Cash Cloud’s federally registered trademarks, and the use of unfair and deceptive trade practices in a wrongful effort to cause Cash Cloud’s hosts to cease doing business with Cash Cloud.<sup>1</sup> It is this last example of Defendant’s misconduct—wrongful efforts to interfere with Cash Cloud’s contractual relationships with its hosts—that requires this Court’s attention.

Since the filing of the bankruptcy petition on February 7, 2023, Defendant has been improperly attempting to take over Cash Cloud’s host locations—host locations where Cash Cloud has exclusive rights to operate digital currency kiosks pursuant to various host contracts. Indeed, on

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<sup>1</sup> In its Complaint, Cash Cloud has asserted the following claims for relief: (1) Temporary Restraining Order and Preliminary Injunctive Relief, (2) Violation of Automatic Stay, 11 U.S.C. § 362, (3) Violation of Lanham Act, 15 U.S.C. § 1125, (4) Consumer Fraud/Deceptive Trade Practices, (5) Tortious Interference with Contract – Host Agreements, (6) Tortious Interference with Contract – 2020 Purchase Agreement, (7) Intentional Interference with Prospective Business Relations, (8) Injurious Falsehoods, and (9) Defamation.

February 8, 2023, the day after the bankruptcy petition was filed, Defendant began contacting Cash Cloud's hosts in an effort to persuade them to switch from Cash Cloud to Defendant. In these communications, Defendant made several material false statements concerning Cash Cloud. This effort by Defendant has not ceased. As recently as March 10, 2023, Defendant has continued to contact Cash Cloud's hosts, making even more false statements to them. Defendant's efforts are tortious, unlawful, and constitute a violation of the automatic bankruptcy stay. Due to the critical importance of Cash Cloud's host contracts, its host relationships, and its goodwill and reputation, Cash Cloud seeks an injunction that would prevent Defendant from soliciting Cash Cloud's hosts or otherwise making additional false statements to its hosts. A preliminary injunction will preserve the status quo to preserve the status quo through the resolution of this dispute.

## II. STATEMENT OF RELEVANT FACTS

As referenced above, Cash Cloud's business is centered on providing the general public the means to buy and sell digital currency (e.g., Bitcoin and other cryptocurrencies) using ATM-style digital currency machines ("DCMs"). Declaration of Christopher McAlary ("McAlary Decl.") at ¶ 4. Cash Cloud's customers purchase digital currency by depositing cash (U.S. dollars) in Cash Cloud's DCM, and receiving digital currency in the customer's digital currency wallet. In turn, Cash Cloud's customers sell digital currency by sending digital currency to Cash Cloud, and receiving the corresponding amount of cash from the DCM. *Id.*

As of December 31, 2022, Cash Cloud operated approximately 4,800 DCMs, or kiosks, throughout the United States and Brazil, installed in some of the largest convenience, grocery and liquor store chains and prestigious malls. *Id.* at ¶ 5. To facilitate the installation of the Kiosks, Cash Cloud entered into numerous contracts or leases with various parties having retail locations (commonly referred to as "hosts"), including convenience stores, malls, and enterprise grocery stores. *Id.* at ¶ 6. The host contracts are essential to Cash Cloud's business as they establish the right for Cash Cloud to operate its kiosks at each location. *Id.*

The terms in the host contracts vary. *Id.* at ¶ 7. However, in general, the terms provide that Cash Cloud is permitted to install a Kiosk at a certain location in exchange for compensation being paid to the host. *Id.* Cash Cloud has thousands of host contracts, and the nature and amount of

1 compensation varies and is sometimes in the form of a fixed monthly rental payment or a variable  
2 portion of the profit of the kiosk. *Id.* at ¶ 8. The host contracts typically have a 3 to 7-year term,  
3 with automatic renewals, unless terminated by either party.

4 Defendant is a direct competitor with Cash Cloud. *Id.* at ¶ 9. Defendant and Cash Cloud are  
5 two of the largest digital currency kiosk operators in the country. *Id.*

6 For several months, Defendant has engaged in unfair and deceptive trade practices to harm  
7 Cash Cloud. *Id.* at ¶ 14. For example, in August 2022, Defendant used its position with BitAccess,  
8 Inc. (“BitAccess,” the company that, for years, had supplied the software needed to operate Cash  
9 Cloud’s kiosks), to unilaterally (over the objection of BitAccess’s officers and lawyer) deactivated  
10 the software provided to Cash Cloud, in derogation of the undertaking/representation made by  
11 BitAccess to a court in Canada that BitAccess would continue to provide the software to Cash Cloud.  
12 *See* Exhibit 2; McAlary Decl. at ¶ 14. Later in 2022, Bitcoin Depot wrongfully infringed on Cash  
13 Cloud’s federally registered trademark, Coin Cloud, using the trademark to redirect internet traffic  
14 to Defendant’s website. *Id.* at ¶ 15.

15 For years, Defendant has known that Cash Cloud had contracts with its hosts. *Id.* at ¶ 10.  
16 Defendant intended for that contractual relationship to be disrupted as a result of Defendant’s  
17 statements to Cash Cloud’s hosts. *Id.* It is customary in Cash Cloud’s industry that digital currency  
18 kiosk operators such as Cash Cloud and Defendant enter into long term contracts. *Id.* at ¶ 11. On  
19 several occasions, Cash Cloud has been involved in competing for an enterprise host’s business with  
20 Defendant, with the winning company earning host contract(s). *Id.* It is also customary in the  
21 industry for host contracts to contain exclusivity provisions which make the kiosk operator the  
22 exclusive provider of digital currency trading services on the host property. *Id.* Cash Cloud’s host  
23 contracts contain such exclusivity provisions. *Id.* at ¶ 11. Upon information and belief, Defendant’s  
24 host contracts contain exclusivity provisions. *See, e.g.,* Exhibit 1; McAlary Decl. at ¶ 12.

25 Cash Cloud has several “enterprise hosts” which have contracted with Cash Cloud to host  
26 thousands of Cash Cloud’s kiosks. McAlary Decl. at ¶ 13. Three of such enterprise hosts are UNFI,  
27 Royal Farms, and 7-Eleven. *Id.* Cash Cloud intends to move forward with 722 kiosks located at  
28 UNFI locations, 219 kiosks located at Royal Farms locations, and 60 kiosks located at 7-Eleven

1 locations. *Id.* These three enterprise hosts alone represent nearly thirty percent of the kiosks intends  
2 to move forward with. *Id.*

3 After Cash Cloud's bankruptcy filing, Defendant engaged in a campaign to target Cash  
4 Cloud's hosts to replace Cash Cloud kiosks with Defendant's kiosks. *Id.* at ¶ 16. For example,  
5 Defendant made false and misleading statements to at least one of Cash Cloud's Kiosk hosts (Royal  
6 Farms) that Cash Cloud "was unable to reorganize its debts," implying that Cash Cloud was  
7 liquidating and ceasing its business operations, which is the exact opposite of the truth. *See* Exhibit  
8 3; McAlary Decl. at ¶ 16. Defendant told the same Cash Cloud host that it "doesn't know what  
9 happens from a contractual standpoint between you all and Coin Cloud, but we're still highly  
10 interested in partnering with Royal Farms!" McAlary Decl. at ¶ 17.

11 Defendant told other hosts (7-Eleven locations) that Cash Cloud "is out of business" and that  
12 it "wanted to replace Cash Cloud's machines with [Defendant's] and take over the rent agreement."  
13 *See* Exhibit 4; McAlary Decl. at ¶ 18. These statements to the 7-Eleven hosts are false. McAlary  
14 Decl. at ¶ 19. Cash Cloud is not out of business. *Id.* Claiming that Cash Cloud is, wrongfully  
15 suggests that Cash Cloud will cease operating the kiosks on the host's property. *Id.*

16 Immediate injunctive relief is needed as Defendant's improper campaign against Cash Cloud  
17 is continuing. *Id.* at ¶ 20. On March 10, 2023 (the same day that the Complaint was filed), Defendant  
18 sent multiple emails to Cash Cloud hosts (UNFI and Royal Farms) seeking to take the business with  
19 that host away from Cash Cloud. *See* Exhibits 5, 6.

20 Several statements made by Defendant to Royal Farms in the March 10, 2023 email are false,  
21 including: (1) "the machines [are] online, but customers not receiving their crypto;" (2) "Coin Cloud  
22 [is] being completely unresponsive to the host after not being paid for months;" and (3) they [Cash  
23 Cloud] stated they will resume payments, do it for a month or two, and then stop paying the retailers  
24 again." McAlary Decl. at ¶ 22. These statements are false and dangerous to Cash Cloud's business.  
25 *Id.* A host who believes Defendant's false statements may switch to Bitcoin Depot fearing (1) a  
26 potential dispute with a customer who may not receive the cryptocurrency he/she purchased; (2) a  
27 non-responsive kiosk operator; and/or (3) that Cash Cloud would stop making host payments in the  
28 near future. *Id.* Indeed, the first false statement about customers no receiving the digital currency



they purchased is particularly harmful to Cash Cloud as it not only puts Cash Cloud's host relationships at risk, but also puts end-user relationships and Cash Cloud's goodwill at risk. *Id.* at ¶ 23.

Defendant's actions towards Cash Cloud's hosts represent a significant threat to Cash Cloud's business, its customer relationships and its goodwill. *Id.* at ¶ 25. Bitcoin Depot has successfully persuaded Cash Cloud host(s) to switch from Cash Cloud to Bitcoin Depot and have caused actual disruption of the contractual relationship between Cash Cloud and its hosts. *Id.* at ¶¶ 25, 28. Furthermore, the false statements contained in the communications from Bitcoin Depot to Cash Cloud's hosts may cause Cash Cloud's hosts to terminate their host contracts in the future or reconsider renewing or extending the host contracts. *Id.*

Furthermore, Cash Cloud has invested substantial time and resources in building and cultivating its relationships with its hosts, the value of which cannot be reduced to a dollar figure and the loss of which would represent irreparable harm to Cash Cloud. *Id.* at ¶ 26. Defendant's activities go beyond the pale of fair and healthy competition in that Defendant used false and misleading statements in an attempt to lure Cash Cloud's kiosk hosts to break their contracts with Cash Cloud and to "partner" with Defendant instead. *Id.* at ¶ 27.

### III. LEGAL ARGUMENT

#### 1. Legal Standard for Issuing a Preliminary Injunction

In all cases, a district court should enter preliminary injunctive relief "upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). Such a showing requires that plaintiff establish it is "likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20; *see also Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009) ("Under *Winter*, [parties] seeking a preliminary injunction must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) a preliminary injunction is in the public interest").

1 In evaluating the four factors, the court may apply a sliding-scale test, under which “the  
2 elements of the preliminary injunction test are balanced, so that a stronger showing of one element  
3 may offset a weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,  
4 1131 (9th Cir. 2011).

5 General legal authority concerning each of the four elements is set forth below.

6 **A. Likelihood of Success on the Merits**

7 “Under traditional legal standards, a moving party may become eligible to obtain a  
8 preliminary injunction by demonstrating a combination of probable success on the merits and the  
9 possibility of irreparable injury. At the very least, it must be shown as an irreducible minimum that  
10 there is a fair chance of success on the merits.” *San Antonio Cmty. Hosp. v. S. California Dist.*  
11 *Council of Carpenters*, 125 F.3d 1230, 1234 (9th Cir. 1997) (citations omitted). In other words, “[a]  
12 plaintiff is not required to demonstrate a certainty of success, but rather only a ‘fair chance of  
13 success,’ in order to obtain preliminary injunctive relief.” *Fleetwash, Inc. v. Hall*, No. 3:17-cv-  
14 00170-MMD-VPC, 2017 WL 2193239, at \*1 (D. Nev. May 18, 2017).

15 In an action for intentional interference with contractual relations, a plaintiff must establish:  
16 (1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3) intentional acts  
17 intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and  
18 (5) resulting damage. *See WMCV Phase 3, LLC v. Shushok & McCoy, Inc.*, 750 F. Supp. 2d 1180,  
19 1195 (D. Nev. 2010) (citing *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267  
20 (2003)).

21 To recover for a violation of the automatic stay, a plaintiff must show that (1) the defendant  
22 violated the stay imposed by the Bankruptcy Code, (2) the violation was willful, and (3) the plaintiff  
23 was injured by the violation. *See In re Paxton*, 596 B.R. 686 (Bankr. N.D. Cal. 2019).

24 **B. Irreparable Harm**

25 Irreparable harm includes “a viable threat of serious harm which cannot be undone.” *Zenith*  
26 *Radio Corp. v. United States*, 710 F.2d 806, 809 (Fed. Cir. 1983) (internal citations omitted).  
27 “[E]conomic injury alone does not support a finding of irreparable harm, because such injury can be  
28 remedied by a damage award,” but evidence of loss of goodwill is sufficient. *Las Vegas Sands Corp.*

1 v. *Fan Yu Ming*, 360 F. Supp. 3d 1072, 1079 (D. Nev. 2019) (citations omitted). Damage to customer  
 2 relationships, loss of customer goodwill, and loss of business opportunities each may also constitute  
 3 irreparable harm. *See, e.g., Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir.  
 4 2012) (citations omitted).

### 5 C. Balance of Hardships

6 Before issuing a preliminary injunction, a court must weigh “the competing claims of injury  
 7 and ... consider the effect on each party of the granting or withholding of the requested relief.” *Las*  
 8 *Vegas Sands Corp.*, 360 F. Supp. 3d at 1081 (quoting *Amoco Prod. Co. v. Village of Gambell, AK*,  
 9 480 U.S. 531, 542 (1987)).

### 10 D. Public Interest

11 “The public interest analysis for the issuance of a preliminary injunction requires [the court]  
 12 to consider ‘whether there exists some critical public interest that would be injured by the grant of  
 13 preliminary relief.’” *Indep. Living Ctr. of So. Cal., Inc. v. Maxwell–Jolly*, 572 F.3d 644, 659 (9th  
 14 Cir.2009) (quoting *Hybritech Inc. v. Abbott Lab.*, 849 F.2d 1446, 1458 (Fed. Cir. 1988)).

## 15 2. The Court Should Issue a Preliminary Injunction

16 This case—involving an unambiguous violation of the automatic stay and tortious  
 17 interference with contract and demonstrated bad faith by Defendant—is a textbook example of the  
 18 appropriate issuance of a preliminary injunction. As described herein, a preliminary injunction  
 19 should be entered because: (1) there is a likelihood that Cash Cloud will succeed on the merits of its  
 20 claims; (2) Cash Cloud is likely to suffer irreparable harm without the issuance of the requested  
 21 injunctive relief; (3) the balance of hardships greatly favors the issuance of the requested injunctive  
 22 relief; and (4) the public interest would best be served by the issuance of the requested injunction.

### 23 A. Cash Cloud is Likely to Succeed on the Merits of Its Claim for Violation of the 24 Automatic Stay.

25 To recover for a violation of the automatic stay, a plaintiff must show that (1) the defendant  
 26 violated the stay imposed by the Bankruptcy Code, (2) the violation was willful, and (3) the plaintiff  
 27 was injured by the violation. *See In re Paxton*, 596 B.R. 686. Each of these elements are satisfied  
 28 here. In working to have Cash Cloud’s hosts switch from hosting Cash Cloud’s kiosk to hosting

1 Defendant's kiosks, Defendant is violating the automatic stay as such conduct constitutes an "act to  
2 obtain possession of property of the estate or of property from the estate or to exercise control over  
3 property of the estate" § 362(a)(3).

4 It is black letter law that Cash Cloud's executory contracts with its hosts (which contain, inter  
5 alia, exclusivity provisions in favor of Cash Cloud), constitute property of the estate which is  
6 protected by the automatic stay. *See, e.g., In re Lehman Bros. Holdings Inc.*, 544 B.R. 16, 40 (Bankr.  
7 S.D.N.Y. 2015) ("A debtor's security interest in collateral or a debtor's interest in an executory  
8 contract as of the commencement of the case comprises property of the estate."); *In re Family Health*  
9 *Services, Inc.*, 105 B.R. 937, 942-43 (Bankr. C.D. Cal. 1989) ("the debtor's good will and its contracts  
10 with subscribers and members are so essential to the survival of the debtor that they constitute  
11 property of the estate as that term is defined in Bankruptcy Code section 541(a)(1)"); *In re HMMH*  
12 *Motor Services, Inc.*, 259 B.R. 440, 451 (Bankr. S.D. Ga. 2000) ("It also includes intangible assets of  
13 the debtor such as relationships with customers and parties dealing with the debtor, goodwill, and  
14 telephone numbers used by the debtor.").

15 Consequently, when Defendant is interfering with Cash Cloud's current contractual  
16 relationships or is otherwise soliciting Cash Cloud's hosts in an effort to have the hosts replace Cash  
17 Cloud kiosks with Defendant's kiosks, such conduct constitutes a willful violation of the bankruptcy  
18 stay. *See In re All Trac Transp., Inc.*, 306 B.R. 859, 880-81 (Bankr. N.D. Tex. 2004); *In re Sherlock*  
19 *Homes of W.N.Y, Inc.*, 246 B.R. 19 (Bankr. W.D.N.Y. 2000).

20 Finally, Cash Cloud has been damaged by Defendant's violation of the bankruptcy stay. Cash  
21 Cloud has already suffered breaches of its host agreements as certain hosts are switching from Cash  
22 Cloud's kiosks to Defendant's kiosks. McAlary Decl. at ¶ 25. Further, Defendant's false statements  
23 made to hosts are harmful to Cash Cloud's business as they incentivize other hosts to break their  
24 agreements with Cash Cloud. *Id.* at ¶

25 **B. Cash Cloud is Likely to Succeed on the Merits of Its Claim for Tortious**  
26 **Interference with Contract – Host Agreements.**

27 In an action for intentional interference with contractual relations, a plaintiff must establish:  
28 (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts

1 intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and  
 2 (5) resulting damage. *See WMCV Phase 3, LLC v. Shushok & McCoy, Inc.*, 750 F. Supp. 2d 1180,  
 3 1195 (D. Nev. 2010) (citing *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267  
 4 (2003)). The evidence before the Court establishes each and every element of this claim.

5 At the outset, there should be no dispute as to the first two elements of the claim for tortious  
 6 interference with contract. There exist valid contracts between Cash Cloud and its hosts. *See*  
 7 McAlary Decl. at ¶¶ 8-11, 13. Further, Defendant had knowledge of the contracts. *Id.* at ¶¶ 10-11.

8 There is substantial evidence to establish the third element, that Defendant engaged in  
 9 intentional acts intended or designed to disrupt the contractual relationship. The day after Cash  
 10 Cloud filed for bankruptcy, Defendant's agents were contacting Cash Cloud's hosts seeking to take  
 11 the business away from Cash Cloud. *See* Exhibit 3. In this communication, Defendant attempted to  
 12 mislead the Royal Farms host into believing that Cash Cloud was liquidating and ceasing its business  
 13 operations, claiming that Cash Cloud "was unable to reorganize its debts." *Id.*; McAlary Decl. at ¶  
 14 16. Confirming that Defendant's intent was to take Cash Cloud's contractually exclusive hosts away,  
 15 the February 8, 2023 email concluded with, "[Defendant] 'doesn't know what happens from a  
 16 contractual standpoint between you all and Coin Cloud, but we're still highly interested in partnering  
 17 with Royal Farms!'" Exhibit 3; McAlary Decl. at ¶ 17.

18 This misconduct continued. On March 10, 2023, Defendant's agents once again contacted  
 19 Royal Farms in an effort to take Cash Cloud's business from it (and using false and misleading  
 20 statements to achieve such an end). *See* Exhibit 5. Indeed, several statements made by Defendant's  
 21 agent to Royal Farms in the March 10, 2023 email are false, including: (1) "the machines being  
 22 online, but customers not receiving their crypto;" (2) "Coin Cloud being completely unresponsive to  
 23 the host after not being paid for months;" and (3) they [Cash Cloud] stated they will resume  
 24 payments, do it for a month or two, and then stop paying the retailers again." *Id.*; McAlary Decl. at  
 25 ¶ 22. Similar improper efforts were made to take the business involving 7-Eleven locations and  
 26 UNFI locations. *See* McAlary Decl. at ¶¶ 18-19; 20; 24; Exhibits 4, 6.

27 Finally, Cash Cloud can establish the fourth and fifth elements of the claim for intentional  
 28 interference with contract: (4) actual disruption of the contract and (5) resulting damage. As a result

1 of Defendant's improper actions, Bitcoin Depot has successfully persuaded Cash Cloud host(s) to  
 2 switch from Cash Cloud to Bitcoin Depot. McAlary Decl. at ¶¶ 25; 28. The damages are substantial.  
 3 In addition to the lost revenue, Defendant's interference has put Cash Cloud's host relationships at  
 4 risk, but also has imperiled Cash Cloud's relationships with its end-user and its goodwill. *Id.* at ¶ 23.  
 5 Accordingly, the Court should find that Cash Cloud is likely to succeed on the merits of its claim for  
 6 tortious interference with contract.

7 **C. Cash Cloud Is Likely to Be Irreparably Harmed Unless a Preliminary**  
 8 **Injunction is Issued.**

9 Cash Cloud's contractual relationships with its hosts are essential to its business as they  
 10 establish the right for Cash Cloud to operate its kiosks at each of its locations. *Id.* at ¶ 6.  
 11 Demonstrating the importance of these contracts is Cash Cloud's repeated negotiation for the  
 12 exclusive right to operate the kiosks. *Id.* at ¶ 11. Should Defendant be able to continue its course of  
 13 conduct in improperly soliciting Cash Cloud's hosts, Cash Cloud will suffer irreparable harm.  
 14 Indeed, already Defendant has caused interruption of the contractual relationship between Cash  
 15 Cloud and its hosts. *Id.* at ¶¶ 25, 28. Defendant has caused hosts to switch from hosting Cash Cloud  
 16 machines to Defendant's machines. *Id.* at ¶ 25. Further, Defendant's false statements concerning  
 17 Cash Cloud are harmful and dangerous to Cash Cloud's business, its goodwill, and its customer  
 18 relationships. *Id.* at ¶ 22. Indeed, and by way of example only, Defendant's false statement that  
 19 Cash Cloud is not sending customers their purchased digital currency is particularly harmful as it not  
 20 only puts Cash Cloud's host relationships at risk, but also puts end-user relationships and Cash  
 21 Cloud's goodwill at risk. *Id.* at ¶ 23.

22 Under such circumstances, courts routinely grant injunctive relief to prevent such irreparable  
 23 harm. *See, e.g., Fleetwash, Inc.*, 2017 WL 2193239, at \*2 ("Defendants' conduct will result in  
 24 irreparable harm to Plaintiff in the form of losing customers and reputational harm that monetary  
 25 damage alone cannot address if MTW is allowed to benefit."); *INAG, Inc. v. Richar, Inc.*, No. 2:16-  
 26 cv-722, 2017 WL 4273103, at \*5 (D. Nev. September 25, 2017) ("The Court finds that absent an  
 27 injunction there would be irreparable harm to the professional reputation and prospective  
 28 professional relationships of Richar, Inc."). Without an injunction, Defendant will continue its

improper campaign against Cash Cloud, harming Cash Cloud's customer relationships, its goodwill and reputation.

**D. The Balance of Hardships Weighs Heavily in Cash Cloud's Favor.**

As explained above, without a preliminary injunction that would prohibit Defendant from continuing to solicit Cash Cloud's hosts, through the use of false statements or otherwise, Cash Cloud loses the benefit of the automatic stay and Cash Cloud's valuable exclusive contracts with its hosts. On the other hand, Defendant would not be put at risk by the issuance of a preliminary injunction. Simply put, Defendant would be playing by the same rules that everyone else is expected to follow.

**E. The Public Interest Supports Jump's Request for Injunctive Relief.**

There is no "critical public interest" that would be injured if Defendant were prohibited from violating the automatic stay or otherwise soliciting Cash Cloud's hosts. *See Indep. Living Ctr. Of So. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d at 659. In fact, the public interest is best served by preserving the integrity of the automatic stay and to prevent the use of false statements to solicit business from Cash Cloud's hosts. *See, e.g., INAG, Inc*, 2017 WL 4273103, at \*6.

**IV. CONCLUSION**

Based upon the foregoing, Cash Cloud respectfully requests that the Court find that a preliminary injunction is necessary and should be issued to enjoin Defendant from violating the automatic stay by soliciting Cash Cloud's hosts (through the use of false statements or otherwise).

Dated this 21st day of March, 2023.

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